

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000895-001 DT

04/13/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

DEBORAH A LOVEJOY

MARK HYATT TYNAN

v.

HARRELL BOYSTER (001)
TIM WRIGHT (001)

RACHELLE Z LEIBSOHN
ANDREW M HULL

REMAND DESK-LCA-CCC
SOUTH MESA-GILBERT JUSTICE
COURT

MINUTE ENTRY

This Court has jurisdiction of these Petitions for Special Actions pursuant to the Arizona Constitution, Article VI, Section 18, and the Rules of Procedure for Special Actions. This Court heard oral argument on February 18, 2004 and formally accepted jurisdiction of both Petitions for Special Action. This Court stayed all proceedings before the trial court (the Respondent Court) pending further order of this court.

Counsel for both Deborah Lovejoy (the Defendant in the case pending before the South Mesa/Gilbert Justice Court) and Tim Wright (the Plaintiff in the case pending in the same court) have requested that this Court accept jurisdiction and reverse and vacate several rulings of the Respondent/Judge in this case.

Plaintiff, Tim Wright, sued his former tenant, Deborah Lovejoy, for damages arising out of a residential lease entered into between the parties. During the term of the lease, Defendant Deborah Lovejoy, served notice upon Wright that she was terminating the lease because she believed the lease was void due to the failure of Wright to register with the Maricopa County Assessors Office as required by A.R.S. Section 33-1902(C). Plaintiff Wright claimed damages under the lease because of the failure of Lovejoy to provide a ten-day notice of her intent to vacate the premises and terminate the lease. Counsel for Lovejoy and Wright filed separate motions for summary judgment, or motions for partial summary judgment. Both counsel continue to agree that the facts of this case are not in dispute, and that judgment pursuant to Rule 56, Arizona Rules of Civil Procedure, is appropriate. In each of their respective Motions for Docket Code 512

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Summary Judgment, each counsel requested oral argument and a hearing before the trial court. The trial court summarily denied these requests, and summarily denied the motions. Both counsel contend that they were entitled to oral argument and a hearing on their motions. Both counsel are correct. Rule 56(c)(1) provides in part:

Upon timely request by any party, the court shall set a time for hearing of the motion. If no request is made, the court may, in its discretion, set at a time for such hearing.... The judgment sought shall be rendered forthwith if the pleadings, disposition, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law (emphasis added).

The Respondent trial judge erred in failing to set each party's respective Motion for Summary Judgment (or Partial Summary Judgment) for oral argument or a hearing. At the time of oral argument or the hearing, the attorneys would then be able to explain to the Respondent trial court that they do not disagree about the facts and argue the issue of which party is entitled to judgment, as a matter of law.

Petitioner Lovejoy contends in her Petition for Special Action that because Wright failed to respond to her cross-motion for summary judgment and motion to amend answer and counterclaim, that she is entitled to the relief requested. This Court rejects that contention as an incorrect generalization. The failure of one party to file an answer to a motion does not automatically entitle the other party to the relief requested. However, in regard to Lovejoy's Motion to Amend Answer and Counterclaim, it does appear that the Respondent trial court erred in denying that motion. Plaintiff Wright had not objection to the motion, and it does not appear that either party or the court could have been prejudiced by the granting of such a motion. More importantly, leave to amend pleadings shall be freely given when justice so requires.¹

Both parties have petitioned this court requesting that this court grant the relief requested in their motions and partial motions for summary judgment. This Court finds that each party's request of this court for summary judgment in their favor is premature. This Court has concluded that the Respondent trial court erred in failing to hold oral argument on all of the pending motions for summary judgment. Since this Court will vacate the orders denying those motions, this case will be remanded back to the Respondent trial judge with instructions to schedule oral argument on all of the pending motions for summary judgment, motions for partial summary judgment, and cross motions.

¹ Rule 15(a)(1), Arizona Rules of Civil Procedure.
Docket Code 512

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IT IS THEREFORE ORDERED granting, in part, the relief requested in both Petitions for Special Action.

IT IS FURTHER ORDERED vacating and reversing the Respondent trial court's orders denying oral argument and denying both party's Motions for Summary Judgment, Motions for Partial Summary Judgment, and Cross Motions.

IT IS FURTHER ORDERED vacating and reversing the Respondent trial court's order denying Lovejoy's Motion to Amend Answer and Counterclaim.

IT IS FURTHER ORDERED remanding this case back to the Respondent trial court with instructions to grant Lovejoy's Motion to Amend Answer and Counterclaim, and to schedule oral argument on all pending motions for summary judgment, motions for partial summary judgment, and cross motions.

IT IS FURTHER ORDERED denying both parties' request for attorneys' fees and costs in these petitions for Special Action.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT